?40 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT
Southern District of Texas

?hn Ayanbadejo, Felicia Ayanbadejo

SUMMONS IN A CIVIL ACTION

V.

Chertoff, Secretary Department of Homeland
?

CASE NUMBER: H-06-1177

M. Upchurch, Director Texas Service Center,

States Citizenship And Immigration Services

TO: (Name and address of Defendant)
Michael Chertoff, et al.
U.S. Attorney's Office,
910 Travis, Suite 1500
Houston, Texas 77002

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

O.J. Lawal, Esq.
O.J. Lawal & Associates
8700 Commerce Park Drive, Suite 202
Houston, Texas 77036

answer to the complaint which is served on you with this summons, within 20 days after service this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you the relief demanded in the complaint Any answer that you serve on the parties to this action must be filed with the clerk of this Court within a reasonable period of time after service.

Michael N. Milby
Clerk

APR 10, 2006
DATE

DEPUTY CLERK

AO (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE	
	DATE
Service of the Summons and complaint was made by me[0]	
NAME OF SERVER *(PRINT)*	TITLE
Check one box below to indicate appropriate method of service	

□ Served personally upon the defendant. Place where served:

□ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

□ Returned unexecuted:

□ Other (specify):

STATEMENT OF SERVICE FEES		
RAVEL ↳	SERVICES	TOTAL
		$0.00

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

Date *Signature of Server*

Address of Server

? As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

(Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

a Ayanbadejo, Folicia Ayanbadejo

County of Residence of First Listed Plaintiff Harris
(EXCEPT IN U.S. PLAINTIFF CASES)

Attorney's (Firm Name, Address, and Telephone Number)
rvel & Associates, 8700 Commerce Park Dr. Ste 272,
n, TX 77036, 713.771.0660

DEFENDANTS

Michael Chertoff, Secretary Dept. of Homeland Security;
Emilio Gonzalez, Director of Texas Service Center;
United States Citizenship and Immigration Services

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) U.S. Attorney's Office
910 Travis, Suite 1800
Houston, Texas 77002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
APR 10 2006
MICHAEL N. MILBY, CLERK OF COURT

H-06-1177

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 Federal Question (U.S. Government Not a Party)
- ☐ 3 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
Insurance	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
Marine Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881		☐ 430 Banks and Banking
Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	PROPERTY RIGHTS	☐ 450 Commerce
Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 820 Copyrights	☐ 460 Deportation
Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 830 Patent	☐ 470 Racketeer Influenced and Corrupt Organizations
Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health	☐ 840 Trademark	☐ 480 Consumer Credit
Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other	LABOR	☐ 490 Cable/Sat TV
Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability		SOCIAL SECURITY	☐ 810 Selective Service
Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/ Exchange
Contract Product Liability			☐ 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC 3410
Franchise			☐ 730 Labor/Mgmt. Reporting & Disclosure Act	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 740 Railway Labor Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence	☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 892 Economic Stabilization Act
Foreclosure	☐ 442 Employment	Habeas Corpus:	☐ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	☐ 893 Environmental Matters
Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 894 Energy Allocation Act
Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty		☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other			☐ 900 Appeal of Fee Determination Under Equal Access to Justice
All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights			☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights	☐ 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Review of finding of marriage fraud, eligibility for Adjustment of Status and Naturalization.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE DOCKET NUMBER

DATE: 1 9, 2006

SIGNATURE OF ATTORNEY OF RECORD

X

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

BEST AVAILABLE COPY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON, TEXAS DIVISION

JOHN AYANBADEJO	§	
FELICIA AYANBADEJO	§	
Plaintiffs		
	§	CIVIL ACTION NO. H-06-1177
VS.	§	
MICHAEL CHERTOFF, SECRETARY	§	
DEPARTMENT OF	§	
HOMELAND SECURITY	§	
EVELYN M. UPCHURCH, DIRECTOR	§	
TEXAS SERVICE CENTER	§	
UNITED STATES CITIZENSHIP	§	
AND IMMIGRATION	§	
SERVICES	§	
Defendants	§	

COMPLAINT FOR DECLARATORY, INJUNCTIVE AND MANDAMUS RELIEF

This complaint challenges the wrongful actions of United States Citizenship and Immigration Services of the United States Department of Homeland Security ("USCIS") in an adjustment of status application of Plaintiff, Mr. Ayanbadejo, beneficiary of an adjustment of status application filed by his United States Citizen spouse, Felicia Malveaux (Mrs. Ayanbadejo) as provided under the Immigration and Nationality Act ("INA" or "the Act") The abdication of statutory and judicial precedential duties imposed upon the USCIS in *Stokes* v. *U.S.. Immigration and Naturalization Service,* 393 F. Supp. 24 (S.D. NY. 1975) and *Ali* v. *I.N.S.,* 661 F. Supp. 1234 (D. Mass. 1986) deprived the plaintiffs of the safeguards set forth in the *Stokes and Ali* judgment; thus rendering Defendant's decision unconstitutional, thwarts congressional intent and causes serious harm to plaintiffs' basic First Amendment Freedom of Association rights; Fifth Amendment Due Process and Equal Protection rights; and Happiness.

NATURE OF THE ACTION

1. This is an action for (i) injunctive relief (Count I), (ii) declaratory relief pursuant to Federal Rule of Civil Procedure 57,28 U.S.C. §§2201, 2202 and 28 USC §2201 (Count II).

2. Plaintiff seeks to hold agency finding (or lack thereof) and conclusion unlawful, unconstitutional and to set aside agency decision that found Plaintiffs' marriage as a marriage to circumvent immigration laws without the requisite procedural safeguards.

3. The classification sought by Plaintiff, Mrs. Ayanbadejo as petitioner for Mr. Ayanbadejo, the beneficiary, includes an I-130 adjustment of status as spouse and an immediate relative of petitioner Mrs. Ayanbadejo. Statute and judicial precedent mandates that the USCIS act to accord the status and benefits when an applicant has demonstrated eligibility; the decision to grant or to extend the status is not subject to the agency's discretion. INA §§ 201(b), 204(b), 291, 8 U.S.C.A. 1151(b), 1154 (b), 1361. *See Chan* v. *Bell,* 464 F. Supp. 125 (D.D.C. 1978) and Firstland v. INS, 377 F.3d 127 (2nd Cir 2004).

4. The agency's finding and refusal to grant the benefit is the result of misapplication and misinterpretation of the law, regulations, the constitution, and facts. Specifically the agency relied on information that Mr. Ayanbadejo's spouse Mrs. Ayanbadejo had rebutted and shown to be demonstrably false and mischaracterized evidence truthfully given by Mrs. Ayanbadejo that employment and the ordinary course of career choices necessitated Mr. and Mrs. Ayanbadejo temporarily living apart Compelling evidence submitted to defendant, which defendant ignored or gave no weight to, clearly shows that though Mr. and Mrs. Ayanbadejo temporarily lived apart they still communicated like other couples similarly situated.

5. Mr. Ayanbadejo has no criminal record of any kind, was working, paid his taxes regularly, and supported his spouse. The unlawful and unconstitutional actions of the defendants

put a strain on the marriage of the plaintiffs contrary to congressional intents and the pronouncements of this administration regarding the importance of marriage and especially the emphasis of marriage between a man and a woman similar to that between the plaintiffs. Defendant's conduct deprived the plaintiffs of many due process safeguards including, *inter alia:* the right to present evidence, including live witnesses, to cross-examine, the right to subpoena witnesses and documents, the right to inspect the record of proceedings etc.

6. Plaintiff asks this court to declare unlawful and unconstitutional the defendants' refusal to grant Mr. Ayanbadejo beneficiary of an adjustment of status filed on his behalf by his United States citizen spouse Felicia Malveaux as required by law as being contrary to the statute.

THE PARTIES

7. Plaintiff John Ayanbadejo ("Mr. Ayanbadejo") is a 40-year-old male citizen of Nigeria. Mr. Ayanbadejo is a lawful resident, who has resided in the United States as a lawful resident since December 1996.

8. Plaintiff Felicia Malveaux is a 39-year-old female United States citizen and is married to Mr. Ayanbadejo.

9. Defendant Michael Chertoff is the Secretary of the United States Department of Homeland Security. Pursuant to 8 U.S.C. 1103(a), he is charged with overall responsibility for administration of the Act, including adjudications of rights and benefits extended by statute. He is sued in his official capacity.

10. Defendant Evelyn M. Upchurch, is District Director of the Texas Service Center of the United States Citizenship and Immigration Services ("USCIS"). Under authority delegated to her pursuant to 8 U.S.C. 1103, she is charged supervisory authority over all operations of the USCIS within her District She is sued in her official capacity.

11. Defendant, the United States Citizenship and Immigration Services ("USCIS"), is an agency of the Federal Government within the Department of Homeland Security. The USCIS is the agency charged with implementing the Act, 8 U.S.C. 1101, et Seq. Pursuant to this authority, the USCIS adjudicates petitions for immigrant and nonimmigrant status and applications for other protections and benefits provided under the Act.

JURISDICTION

12. This Court has jurisdiction over the subject matter of this case pursuant to INA §§201(b), 204(b), 291; 8 U.S.C.A. 1151(b), 1154 (b); 8 U.S.C.A. § 1329; 28 USC §§1331, 1346(a)(2), 1361, 2201-2202; 5 U.S.C. 701, et seq., 706(1), 555(b), 557, and Rule 57 of the Federal Rules of Civil Procedure. *See Chan* v. *Bell,* 464 F. Supp. 125 (D.D.C. 1978) and *Nakamoto* v. *Ashcroft,* 363 F.3d 874 (9th Cir. 2004).

VENUE

13. Venue is proper in this district pursuant to 28 USC § 1391(b), (e) in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides, where the Plaintiff resides, and where a substantial part of the events or omissions giving rise to Plaintiffs claim occurred More specifically, Plaintiff Felicia Malveaux's application for an adjustment of status filed on behalf of her spouse Mr. Ayanbadejo was properly filed with and was ultimately denied by the Houston USCIS District Director,

EXHAUSTION OF REMEDIES

14. Plaintiff has exhausted all of their administrative remedies. Mr. and Mrs. Ayanbadejo through their attorney have administratively appealed the denial of Mr. Ayanbadejo's adjustment of status application to the Board of Immigration Appeal ("BIA"). This administrative appeal

dated October 9, 2002, was filed on November 5, 2002. Due to the affirmative misconduct of Defendants who refused to timely forward plaintiffs' appeal to the B1A despite repeated requests to do so by plaintiffs' attorney the BIA did not give a decision on plaintiffs' case until June 16, 2005. Whereupon the B1A summarily affirmed the decision of the district director without addressing constitutional issues raised by the plaintiffs or considering compelling evidence submitted by the plaintiffs. Relying instead on the same evidence that plaintiff, Mrs. Ayanbadejo, Mr. Ayanbadejo's spouse had rebutted and showed to be demonstrably false and mischaracterized evidence truthfully given by Mrs. Ayanbadejo that employment and the ordinary course of career choices necessitated Mr. and Mrs. Ayanbadejo temporarily living apart. Compelling evidence submitted to defendant, which defendant ignored or gave no weight to, clearly shows that though Mr. and Mrs. Ayanbadejo temporarily lived apart they still communicated like other couples similarly situated and established a life together. As a result of confusion arising from the passage of the REAL ID Act and to preserve Plaintiffs' appeal rights following advise from the Clerk's Office of the Fifth Circuit Court of Appeal; Plaintiff John Ayanbadejo timely appealed the BIA's June 16, 2005 decision to the Fifth Circuit Court of Appeal who declined jurisdiction and denied Mr. Ayanbadejo's motion for reconsideration in opinion dated March 15, 2006. Thus no further administrative proceedings are required and this Court's jurisdiction is properly invoked pursuant to 8 U.S.CA. § 1329, 28 USC §§1331, 1346(aX2), 1361, 2201-2202, 5 U.S.C. 701, et seq., 706(1), 555(b), 557 and Rule 57 of the Federal Rules of Civil Procedure.

CAUSE OF ACTION

15. A United States citizen spouse can petition for an adjustment of status for a spouse as an immediate relative. A United States citizen who wishes to obtain permanent residence for a spouse files a petition on Form I-130. Supporting document must be filed as follows:

I. A certified copy of the record of marriage.

II. Proof of termination of any prior marriages of either party, i.e., a certified copy of each applicable divorce or annulment decree or death certificate of prior spouse, as applicable.

III. Proof of United States citizenship of the petitioning spouse if United States citizen by birth may be accomplished by submitting petitioner's U.S. passport or birth certificate.

IV. Biographic forms G-325A for both petitioner and beneficiary.

V. One "ADIT" type photo of the petitioner and of the beneficiary.

The petition is filed with the USCIS office having jurisdiction over the place of residence of the petitioning United States citizen or beneficiary, and should be accompanied by a check or money order for the appropriate amount payable to the USCIS. On or about February 17, 1997, plaintiff Ms. Felicia Malveaux then a thirty year old United Stales citizen filed an I-130 petition to classify her spouse, plaintiff Mr. Ayanbadejo then a thirty-two year old Nigerian citizen as an immediate relative adjustment of status applicant.

16. Mrs. Ayanbadejo submitted all the requisite documents as stated by the defendants' policy and regulations.

17. On or about December 5, 2000 after an interview to adjust the beneficiary's Mr. Ayanbadejo's status to that of lawful permanent status, the USCIS requested additional

documentation from the petitioner. Specifically, the USCIS requested proof of cohabitation, immunizations for the beneficiary and a letter of employment. Said documents were provided as requested.

18. On or about December 5, 2000 the USCIS issued a notice of intent to deny the visa petition, on an alleged finding that petitioner had not established the eligibility for the benefit sought. The USCIS stated that an alleged investigation revealed different addresses for Mrs. Ayanbadejo and Mr. Ayanbadejo during July 1997 and another time period, which the USCIS failed to specify. Mrs. Ayanbadejo responded to aforementioned notice with an affidavit dated January 24, 2001 in which the address discrepancies were rebutted, explained and shown to be demonstrably false.

19. On or about April 17, 2001, due to lack of response from the USCIS Mrs. Ayanbadejo on advise of her then lawyer Mr. Dee N.A. Waobikeze filed another Form I-130 ostensibly under the LIFE Act as she was advised by her lawyer and was again interviewed. On June 26, 2002 the USCIS issued a second Notice of Intention to Deny on grounds that Mrs. Ayanbadejo and Mr. Ayanbadejo were living separately and that the documentation submitted by Mrs. Ayanbadejo was insufficient to establish eligibility for the benefit sought. Mrs. Ayanbadejo responded by providing additional documentation and an affidavit dated July 17 2002. In her said affidavit Mrs. Ayanbadejo explained that career and employment choices necessitated the couple Irving apart temporarily.

20. On October *9,* 2002 USCIS issued a Notice of Denial based on an unconstitutional allegation that Mr. Ayanbadejo and Mrs. Ayanbadejo were living apart and that evidence showing intention to establish a life together was insufficient to establish a bona fide marriage.

21. There are no federal dictates about the kind of life that married partners should lead. Any attempt to regulate life styles and specify the requirements of bona fide marriage would raise serious constitutional questions. *See Bark* v. *INS,* 511 F.2d 12022 (9th Cir. 1975). Evidence to establish intent to live a life together may take many forms including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, joint income tax forms, or bank accounts etc. *See Matter of Phillis,* 15 I. & N. Dec. 385 (BIA 1975).

22. In accordance with defendant's requests, policies and regulations Mr. Ayanbadejo and Mrs. Ayanbadejo submitted compelling evidence, which time and again has been deemed sufficient to establish eligibility for the benefit, sought. Mr. Ayanbadejo and Mrs. Ayanbadejo to establish the bona fides of their marriage submitted *Federal documents:* specifically Federal Tax returns, correspondence between the Federal Internal Revenue Service (FIRS) and Mr. Ayanbadejo and Mrs. Ayanbadejo, a Federal installment agreement dated 6/14/02; 2000 and 2001 Social Security statements; *State of New York Documents:* 2000 New York State *Nonresident* Income Tax Returns, New York State Employment Retirement and Benefit form listing Mrs. Ayanbadejo as beneficiary of the accounts, which included a life insurance policy of over $100,000; New York Office of Temporary & Disability Assistance Post Employment Information form listing Mrs. Ayanbadejo as an emergency contact; Change of Address form from Mr. Ayanbadejo where Mrs. Ayanbadejo is again listed as emergency contact; employment letter from New York State Office of Temporary & Disability Assistance to Mr. Ayanbadejo dated 6/6/01 confirming employment as Hearing Officer, Acknowledgement letter from New York City Department of Finance regarding Administrative Law Judge position; copies of pay check stubs from New York State showing Mr. Ayanbadejo's marital status of married (Mr.

Ayanbadejo worked within the vicinity of the World Trade Center and witnessed first hand the collapse of the Twin Towers; the evidence submitted from New York State is especially very poignant and pertinent because if as Mr. Ayanbadejo's spouse Mrs. Ayanbadejo feared he had been a victim of the World Trade Center tragedy, ***no court no matter how irrational with the most basic understanding of the law,*** with all the compelling evidence submitted, will have failed to recognize Mrs. Ayanbadejo as Mr. Ayanbadejo's spouse thereby entitling her to hundreds of thousands in employment and other death benefits); *State of Texas voter registration card, Jefferson County* - for Mr. Ayanbadejo showing same address with Mrs. Ayanbadejo; *Joint Account Bank Statements* - from Wells Fargo, Bank United, Washington Mutual, Mobil Oil Federal Credit Union in Beaumont and Bank Statement from Citibank; *Bank Credit Card correspondence* - from Bank United, Mobil Oil Credit Union and Wells Fargo; *Airline Boarding Passes and Itineraries* - showing travel between New York and Houston, Texas including boarding passes from AirTran 9/30/00 - 10/7/00; 01/24/01; U.S. Airways 4/12/01 - 4/16/01; TWA boarding passes 7/16/01 - 7/19/01; *Cell Phone Bill from Sprint* - 8/01.

23. The USCIS expressed doubt as to the validity of the marriage based upon an unconscionable and unconstitutional finding that because Mrs. Ayanbadejo was sole signatory on some checks from a Joint Bank in which Mr. Ayanbadejo contributed majority of the funds the activity was insufficient to show a bona fide marriage - Notwithstanding the fact that numerous surveys of most households in America today including probably this Court's shows that the female spouse control the household finances (one wonders what country the USCIS lives in). In evaluating the evidence the USCIS may not abuse its discretion by mischaracterizing evidence or by assigning requirements that constitute "sufficient activity". *See Bark supra* and *Rodriguez-Gutierrez* v. *INS,* 59 F.3d 504 (5th Cir. 1995).

24. Plaintiff John Ayanbadejo was and remains *prima facie* eligible for an adjustment of status and naturalization since at the time of filing his application for an adjustment of status:

a. Mr. Ayanbadejo speaks and understands English very fluently, is of very good moral character during the period for which good moral character is required (Mr. Ayanbadejo and Mrs. Ayanbadejo are both Catholics and Mr. Ayanbadejo has no criminal record of any kind) and is firmly attached to the principles of the United States Constitution both as an officer and member of this Court in good standing, as a member of the Courts in New York both Federal and State in good standing, and as a former Hearing Officer with the State of New York. INA § 316,8 U.S.C. § 1427.

b. Mr. Ayanbadejo had lawfully been admitted to the United States, had established a life together with his United States citizen spouse, Ms. Felicia Matveaux for more than the requisite two years for an adjustment of status and more than the requisite five years for naturalization. Mr. Ayanbadejo has United States citizen siblings who are of equally excellent moral character and he has lawfully resided in the United States for about ten years with no crimina! record. Mr. Ayanbadejo has met all the physical presence requirements for both an adjustment of status and naturalization.

c. In an age of low or poor integrity displayed in society today, Mr. Ayanbadejo in the contrary is a person of high integrity, has been given an excellent recommendation by one of his former bosses in the State of New York, Supervising Administrative Law Judge and former Colonel of the United States Army in the Judges Advocate General division, Col. James E. Brown (Rtd.). He is

an asset anywhere he chooses to go and he will be an excellent choice for Junior Partner in the Law Offices of O.J. Lawal & Associates, if he so wishes to work with the office.

d. The grounds asserted by the USCIS in support of its denial - that because Mr. Ayanbadejo and Mrs. Ayanbadejo were living separately and because Mrs. Ayanbadejo was sole signatory on a joint account where the majority of the funds were provided by Mr. Ayanbadejo - is highly irrational, unconscionable, unconstitutional, not warranted by law and Mr. Ayanbadejo is eligible for an adjustment of status and naturalization. In an age where modern couples have to do what they can within the boundaries of the law to live the American dream, Mr. Ayanbadejo and Mrs. Ayanbadejo marriage was no different from the millions of other couples striving to achieve the American dream Defendants' conduct is an impermissible unconstitutional interference with this dream.

25. Mr. Ayanbadejo and Mrs. Ayanbadejo had clearly more than established the bona fides of their marriage and *prima facie* eligibility for the benefit sought.

26. Mr. Ayanbadejo and Mrs. Ayanbadejo contends that defendant's decision on Mr. Ayanbadejo's adjustment of status application was arbitrary, capricious, an abuse of discretion, unconstitutional and otherwise not in accordance with the law. Defendants made no attempt in giving weight to the plethora of compelling evidence submitted in Mrs. Ayanbadejo's application instead it impermissibly and unconstitutionally relied on evidence which had been mischaracterized, proven to be demonstrably false and espouses incorrect legal conclusions.

27. Mr. Ayanbadejo and Mrs. Ayanbadejo further contend that the Defendant in its decision that plaintiffs' marriage was one entered into to circumvent immigration laws, in denying Mrs.

Ayanbadejo's application and in subsequent proceedings failed to follow their own rules, policies and regulations.

i. The United States Supreme Court and the Court of Appeal has held that: "Though the agency's discretion is unfettered at the outset, if it announces and follows - by rule or settled course of adjudication - a general policy by which its exercise of discretion will be governed, an irrational departure from the policy (as opposed to an avowed alteration of it) would constitute action that must be overturned as "arbitrary, capricious [or] an abuse of discretion' within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1)(A). *See INS* v. *Yueh-Shiao Yang*, 519 U.S. 26, 117 S. Ct. 350, 353 and *Agnes Cho v. Gonzales*, 404 F. Supp.3d 96 (1st Cir. 2005). Further the Supreme Court and Fifth Circuit Court of Appeals has held that the failure of defendants to follow its own regulations and its own precedent is a violation of due process. See *United States ex rel. Accardi v. Shaugnessy*, 347 U.S. 260, 267-68 (1954) and *Haitian Refugee Center v. Smith*, 676 F.2d 1023, 1041 n. 48 (5th Cir. 1982). Federal power is not so plenary that any agent of the national government may arbitrarily subject all resident aliens to different substantive rules than those applied to citizens. U.S.C.A. Const. Amend. 5. *See Hampton* v. *Mow Sun Wong*, 96 S. Ct 1895, 426 U.S. 88, 48 L. Ed. 2d 495. Finally, resident aliens are entitled in their persons and effects to the protection of United States laws. See *Carlson* v. *London*, 72 S. Ct 525, 342 U.S. 524.

ii. Mr. and Mrs. Ayanbadejo sincerely believes that their case fells squarely within the parameters and safeguards set forth by the Supreme Court and Court of Appeals and are therefore entitled to the protection of this Court against the

unconstitutional, unlawful and arbitrary and capricious actions of the defendants. The position of the Government was and is not substantially justified under the EAJA, 28 USC §2412(d)(1)(B).

PRAYER

WHEREFORE, in view of the arguments and authority noted herein, Mr. Ayanbadejo and Mrs. Ayanbadejo respectfully prays that the defendants be cited to appear herein and that upon due consideration, the Court:

a. Issues a writ of mandamus requiring Defendants to submit the records of its proceedings and decision in connection with Mrs. Ayanbadejo's adjustment of status application denial to this court for review in accordance with this Court's jurisdiction and Plaintiffs Mr. Ayanbadejo's FOIA request dated November 29, 2005 in which Defendants acknowledged receipt on December 22, 2005.

b. Considers Mrs. Ayanbadejo's application for adjustment of status filed on behalf of her spouse Mr. Ayanbadejo, the beneficiary *de novo*, as authorized by INA §§ 201(b), 204(b), 291 and his eligibility for naturalization as authorized by INA § 310(c), 8 U.S.C. §14 21(c);

c. Enter an order vacating the Defendants' decision declaring plaintiffs' marriage a sham the basis of the denial of Mrs. Ayanbadejo's adjustment of status application, and declaring that Mr. Ayanbadejo is *prima facie* eligible for an adjustment of status and naturalization;

d. Order Mrs. Ayanbadejo's application for an adjustment of status remanded for prompt consideration by the Defendants under the correct constitutional legal standards;

e. Order that Mr. Ayanbadejo and Mrs. Ayanbadejo be awarded reasonable attorney's fees; and

f. Further order that Mr. Ayanbadejo and Mrs. Ayanbadejo be granted such other relief at law and in equity as justice may require.

Dated this 7th day of April 2006.

Respectfully Submitted,

O.J. LAWAL & ASSOCIATES, P.C.
8700 Commerce Park Drive, Suite 202
Houston, Texas 77036
Email: ojlawal24@msn.com
TEL: (713)773-0600
FAX: (713)773-0699

By: _____
O.J. Lawal, Esq.
SBN: 24004144
FBN: 23500

ATTORNEY FOR PLAINTIFFS
MR. AYANBADEJO AND MRS. AYANBADEJO

CERTIFICATE OF SERVICE

I certify that I served by certified mail return receipt requested, on April 7, 2006, a true copy of the foregoing complaint on the following parties through their known attorney:

1. Michael Chertoff, Secretary, U.S. Department of Homeland Security,
2. Evelyn M. Upchurch, District Director, Texas Service Center
3. U.S. Citizenship & Immigration Services

U.S. Attorney's Office
910 Travis, Suite 1500
Houston, Texas 77002

By: _____
O.J. Lawal, Esq.